

IMPLEMENTATION OF THE LONG TERM CARE REFORM ACT OF 2005

Submitted to the Joint Legislative Committee on Health Care
Oversight

7 February 2006

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Senator Elizabeth H. Roberts
Co-Chair
Representative Steven M. Costantino
Co-Chair
Joint Legislative Committee
on Health Care Oversight
State House
Smith Street
Providence, RI 02908

Dear Chairwoman Roberts and Chairman Costantino:

Enclosed is the "Report of the Department of Health and the Department of Human Services on the Implementation of the Long Term Care Reform Act of 2005." As you know this Report was required by section 7 of Public Laws 2005-156 and 2005-247. We would be pleased to provide you with any additional information you may require in this matter.

Sincerely,

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Ronald A. Lebel, Esq.
Acting Director
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Enclosure

Introduction

On 5 July 2005 the Long Term Care Reform Act ('LTCRA') of 2005 was enacted by the General Assembly. The LTCRA was comprised of four distinct, but related bills now codified as Public Laws (Senate versions were enacted as Public Laws 156, 157, 158 and 159 and the House versions were enacted as Public Laws 247, 248, 249 and 250). The LTCRA contains a number of specific amendments and additions to the Rhode Island General Laws.

The General Assembly enacted the LTCRA "...

to establish standards for the initial and continued licensure of nursing facilities and for additional ongoing oversight and enforcement with respect to nursing facilities in order to:

(1) Determine the general financial solvency of nursing facilities, and to assure that the quality of resident care is not compromised by a lack of solvency;

(2) Avoid the closure of nursing facilities due to bankruptcy, receivership, or deficiencies in the quality of resident care, or any combination thereof;

(3) Affirm the financial and fiduciary responsibility of the owners or boards of directors or other governing bodies to prevent declines in financial condition or the quality of resident care that may make closure and other actual or potential harm to nursing home residents imminent;

(4) Assure that nursing home residents and their families are notified whenever the future operation of the facility in which they reside is in jeopardy; and

(5) Provide powers and abilities to the director of the department of health to effect the purposes of this act."

To permit the General Assembly to be informed as to implementation of the LTCRA, section 7 of Public Laws 156 and 248 require that "On or before January 15, 2006, the director of health and the director of human services shall submit a report to the joint legislative committee on health care oversight on the implementation and effectiveness of the "Long-Term Care Reform Act of 2005."

Implementation

Shortly following the enactment of the LTCRA, the Department of Health created an informal staff group to oversee implementation of the several aspects of the Act. These efforts and their results are reported below by operational components.

Licensure of Nursing Home Administrators

Public Laws 2005- 157 and 2005- 248 specified additional disciplinary actions that can be taken against an Administrator's license when the facility under his/her control is determined to have continued poor performance or is repeatedly unable to attain and maintain compliance with regulatory standards. These statutory provisions are now in effect; regulatory amendments will be forthcoming in the next promulgation cycle.

Residents Rights and Family Councils

Public Laws 2005- 157 and 2005 - 248 added statutory language regarding a nursing facility's obligations to support family councils. Federal regulations had previously authorized family councils. The draft nursing facility regulations will give effect to the statutory language. These regulations were the subject of a community review meeting on 17 December 2005 and will be posted for formal public hearing in February.

Nursing Facility Licensure—Initial, Renewal and Change in Ownership Reviews

Public Laws 2005-158 and 2005- 249 establish additional informational requirements to be satisfied in the granting of an initial license or in a change in ownership review. The additional criteria relate to the background and qualifications of the proposed owner(s), financial assets, compliance history, disclosure of management contracts and other issues. The additional criteria and requirements have been included in the draft regulations. Public Laws 2005–156 and 2005–247 require the Department to verify compliance with licensure requirements prior to renewal and to separate the approval for renewal issuance from the survey process- these operational requirements have been implemented.

Medical Directors and Attending Physicians

Public Laws 2005–157 and 2005 - 248 provided additional specific responsibilities for medical directors and attending physicians. The additional criteria and requirements have been included in the draft regulations.

Survey Related Matters

Public Laws 2005–156, 2005- 157, 2005–247 and 2005–248 established requirements for the Department to develop a predictive model to identify “at risk” facilities for additional surveys. The Department is now utilizing the CMS “Special Focus Facility” listing to select nursing facilities for additional “interim” survey visits. Further, the Department has initiated a discussion with a private research entity to develop a model that incorporates the additional criteria enumerated in the statute. The Public Laws also required the Department to establish additional policies and protocols to assure that no surveyor has any conflicts of interest with respect to facilities being surveyed. These protocols and the related oversight are in place.

Deficiency Tracking and Appeals / Plans of Correction

Public Laws 2005–156 and 2005 - 247 require the Department to track all deficiencies initially cited by any surveyor. The Department utilizes the federal database system known as “ASPEN” for this purpose. In May of 2005 the Department amended its written protocol that permits survey staff to appeal or to express concerns with any deficiency cited or omitted with a final appeal to the Associate Director of Health. Further, in October of 2005 CMS adopted an anonymous appeal process whereby surveyors could raise any concerns to the Regional Office of CMS.

Interagency Relationships/Coordination

Public Laws 2005–156 and 2005–247 set forth certain required relationships between HEALTH and other entities including the Department of the Attorney General , the federally funded Quality Improvement Organization (‘QIO’ - Rhode Island Quality Partners), the Department of Human Services, and the Department of Elderly Affairs. In cooperation with the referenced entities, the Department established a series of ongoing formal meetings and prepared draft written agreements that are presently under review by the expected signatory agencies.

Monitoring, Oversight and Additional Requirements for “At Risk” Nursing Facilities

Public Laws 2005–156 and 2005 - 247 establish increased monitoring, reporting and other remedies for the oversight of troubled facilities. The Director is authorized to require independent quality monitors, consultants, and temporary managers for nursing facilities when warranted. As authorized, the Department maintains listings of qualified consultants, managers and receivers. The Departments of Health and Human Services have implemented monthly reviews of “at risk” facilities. The statutes provide the administrative authority for the Director to act. No regulations are needed for implementation of these provisions. The same Public Laws require the Departments of Health and Human Services to adopt regulations to implement new statutory requirements for providers determined to be experiencing an adverse change in financial conditions. The two Departments have initiated preliminary meetings with representatives of the nursing facility industry. Additional financial reporting requirements necessary to provide sufficient financial information to monitor financial condition have yet to be finalized.

Posting of Staffing Levels

Public Laws 2005–157 and 2005–248 require nursing facilities to post staffing levels in a public place in the facility. This is also a federal requirement. The new state statutory language requires facilities to prepare an annual report regarding nurse staffing that includes information on levels, use of agency personnel, and staff retention. These additional requirements have been included in the draft regulations.

Resident and Family Notifications

Public Laws 2005–157 and 2005–248 require that the Department establish regulatory provisions to notice residents, families, attending physicians and/or the medical directors when certain regulatory determinations are made. These determinations include findings of “immediate jeopardy”, “substandard quality of care” and certain “changes in resident condition.” These additional requirements have been included in the draft regulations. In September of 2004 the Department implemented formal “enforcement tracking” of these matters and a protocol for family and other notifications was formally adopted in March

of 2005. Lastly, facilities are now required to report significant changes in resident status as measured in the MDS (Minimum Data Set.)

Nursing Facility Quality Improvement Program Requirements

Public Laws 2005- 157 and 2005–248 require licensed nursing facilities to maintain facility quality improvement programs that meet minimum standards as established in regulations. Draft regulations have been developed to include these statutory amendments.

Financial Oversight

Public Laws 2005–156 and 2005 247 require the Department of Human Services, in consultation with Department of Health, to develop additional financial reporting requirements to permit the Department of Human Services to assess the financial status of nursing facilities. The Department of Human Services has met with representatives of the nursing home industry to consider these data and indicators that would be required to implement the new statutory provisions. The new statutory provisions also provide the Department of Human services with the ability to issue a special rate appeal to provide financial support if the Department of Health orders a temporary manager or consultant.

Nursing Facility Receivership Act Amendments

Public Laws 2005 – 159 and 2005 - 250 amended numerous aspects of the previous receivership statute. An initial set of proposed regulations to implement the nursing facility receivership statute has been circulated. These regulations were the subject of an informal community review on 17 December 2005 and a formal public hearing is scheduled for 8 March 2006 at 9:30 AM in the Cannon Building.

Abuse, Neglect and Mistreatment

Public Laws 2005 – 156 and 2005 – 247 amended the existing statute by defining ‘immediate jeopardy’, ‘non-immediate jeopardy-high potential for harm’ and established new timelines for the initiation of investigations. The amendments also address the prioritization of complaints processed under the statute. To implement these requirements, the Department has amended its Office of Facilities Regulation protocols, and is conducting a broader review of complaint processing/ investigations workflow.

Summary

The Departments of Health and Human Services have initiated actions to implement all provisions of the Long Term Care Reform Act of 2005. Attached is an Excel spreadsheet that provides more detail regarding the implementation of the LTCRA. Additional information may be requested from Donald C. Williams at 222-1600.

#	Act/Title	Statute	New items/issues	Status
1	C-157	5-45-3 (3)	Board of examiners (NF administrators): {adds} recommend disciplinary action - including lic. Probation, ordering CEU or professional mentoring by nF professionals {adds} ..or when a nf under the admin. Control found on survey to have continued poor performance or is repeatedly unable to remain in compliance with standards...	To be added to NHA regulations - statute in effect in interim.
2	C-157	5-45-12 (a) (b) (1) - (3)	{adds} , or refuse to renew any license {adds} or may require participation in CEU, or prof. Mentoring or may place admin. On probation.. If a NH admin. Is placed on probation, the department may require: (1) reports, basis of probation; (2) limit practice to areas prescribed by DOH, (3) complete prescribed CEU's until admin attains degree of skill, basis of probation	To be added to NHA regulations - statute in effect in interim.
12	C-157	23-17.5-30	Resident Rights: Family councils - outlines conditions for	Fed-reg's allow for - added to draft rules for all NF's in RI.
16	C-156	23-17.8-1	Definitions - added IJ, Non-IJ-High Harm and new timelines for complaint investigation(s). Match federal definitions - timelines for state stricter and continue to impact staff resource allocation. Impacts all facility and professional license types for investigation of abuse, mistreatment, and neglect.	HEALTH conducting systems and workflow analysis for all complaints to DOH.
17	C-156	23-17.8-9	Duties of Director - prioritization & timelines	Same as above - #16 23-17.8-1
1	C-159	23-17.11 23-17.11-2 23-17.11-3 (4) (5) (6) (7) (i)-(xi) (8) (I)-(xi)	{Law name change} NF Receivership Act {add} and provide appropriate legal remedies to provide quality of care for residentns in NF's Definitions: Person; Resident; Mismanagement; Financial solvency, to include: (see criteria list) Controlling person: (see criteria list)	New Regulations drafted, Community Review held 15 December 2005. Public Hearing to be scheduled.
2 3 4	C-159	23-17.11-4 (a) (c) (d)	Powers of Director {add} establish a process for notification of quality of care concerns, survey results and enforcement actions to residents, families, residents' legal rep. and health care providers, the LTC ombudsman and the public. Facility shall be responsible for all costs associated with this chapter in an amount to be determined by the director or the attorney general, subject to the approval of the superior court. Facility to provide on demand any and all docs. Referring or relating to the financial management of fac. (lists types)	Director's administrative authority: Web-based survey reporting system in development: MOU with LTC Ombudsman sharing complaint and enforcement information. Included in draft regulations.

#	Act/Title	Statute	New items/issues	Status
5	C-159	23-17.11-6	Mismanagement of facility	Included in draft regulations.
		(a)	{adds} mismanaged (see def.)	
		(b)	{adds} court shall appoint receiver with experience in the delivery of HC services, if feasible, ltc fac's. no financial interest.	
		(1)-(4)	criteria for receiver	
		(c)	changes "removal of persons" to closure of fac.	
		23-17.11-7	Reports - Use of experts -- Costs	
			DOH-AG: any reports public and at cost of fac.	
		23-17.11-8	Duty to cooperate (facility with DOH & AG)	
		23-17.11-9	Retaliation prohibited	
		23-17.11-10	Lien - states shall have for reasonable costs	
6		23-17.11-11	Whistleblower protections	
		23-17.11-12	Penalties - fines for 11-4(c) and (d), 11-7, 11-8 \$1,000	
		23-17.11-13	Severability	
3	C-158	23-17-5.1	Additional info for initial NF lic or CHOW - DOH to adopt rules regarding info to include:	Added to draft NF rules
		(a)	-background & quals of applicant or proposed lic. Holder; -financial threshold that shall include: sufficient resources to operate NF at lic. Capacity for 30 days; background info on each person with 5% interest	
4	C-158	(b)	sworn affidavit on validity of info to substantiate a satisfactory compliance history - 5 years prior to application	Added to draft NF rules
5	C-158	(c)	DOH to gather info from state departments & agencies	To be included in inter-agency agreements
6	C-158	(d)	Any applicant seeking a NF lic. Who intends to contract with a management compy - file a copy of the proposed management contract - including fees to be paid and areas of control that MC shall be responsible. Including 5% int.	Added to draft NF rules
7	C-158	23-17-5.2	Additional info for NF lic. Renewal	To be included in inter-agency agreements
		(a)	At least every 2 years, DOH shall gather information from state depts. & agencies relating to the experience and qualifications of the nursing facility applicant for re-licensure.	
8	C-158	(b)	1-1-06: NF applying for renewal that contracts with a MC must file a copy of the contract, including fee, type of entity, identification of all general or limited partners.	Added to draft NF rules
9	C-158	(c)	Significant changes in MC shall submit a copy of revised contract to DOH within 30 days of effective date of new contract.	Added to draft NF rules
1	C-158	23-17-8.1	{add} , order the licensee to be placed on probationary status and set conditions with which the licensee must comply within a set period of time,	Added to draft NF rules

#	Act/Title	Statute	New items/issues	Status
4	C-157	23-17-10.5	Medical director and attending physician file: {adds} Such responsibilities shall include: -implementation of fac. P&P related to med. Care delivered -physician & advanced practice pract. credentialing -pract. Performance reviews -employee health, including infrection control measures -evaluation of health Care delivery, including oversight of medical records and part. in QI -provision of staff education on medical issues -participation in survey process, including, resolution of deficiencies as needed -and, other duties as ruled by DOH	Added to draft NF rules and state licensure investigation protocol
1	C-156	23-17-12(a)	Remove ALR's: Criteria for frequency of inspection (new in bold): patient acuity, quality indicators, staff retention, financial status.	OFR using federal Special Focus Facility listing (e.g., 3 years of survey, revisits, and substantiated complaints) to select NF's for "interim" surveys; HSR/OFR meets monthly with DHS to review NF's fiscal status; HSR/OFR developing "predictive survey model" to expand SFF listing and focus survey investigations; NF's draft regulations will require NF's to collect and report staff turnover information;
2	C-156	23-17-12(b)	No employee participating in or supervising an inspection where there is a conflict of interest now or past 5 yrs.	May '05 OFR established new protocol for identification and review of ANY employee conflicts of interest; All OFR employee's reviewed and any conflicts documented - supervising assignments ammended as needed; All OFR employee's required to notify office if there are any changes, and all new employee are reviewed upon hire.
3	C-156	23-17-12.1(b)	Responsibility for verifying compliance with licensing requirements and issuing renewal licenses apart from inspection process.	OFR conducting annual surveys for all NF's prior to licensure. HSR licensure office issuing renewals.
4	C-156	23-17-12.1(c)	Department - written procedures to: (i) track all deficiencies, and (ii) define internal process for appealing def. citations	OFR uses federal database system ASPEN - written procedures available; May '05 OFR expanded written protocol for staff to appeal or express concerns with any deficiencies with final appeal to Associate Director of Health in DHSR, and Oct '05 CMS adopted (annoyomus) appeal process for surveyors to CMS RO.
6	C-156	23-17-12.1(d)	Department - establish procedures to verify the implementation of plans of correction & remediation.	OFR inspection protocols require PoC's be reviewed for acceptability, confirmed in writing to provider, and follow-up inspections scheduled/completed.
2	C-158	23-17-12.3	Penalty for violation of sections {add & def.} "controlling person"	Director's administrative authority;

#	Act/Title	Statute	New items/issues	Status
7	C-156	23-17-12.5 (a) & (b)	Complaints: NOT Abuse, M, N - 23-17.8: Investigation timelines - 24 hours (IJ) 7 days (Harm) 21 days (potential for harm); 60 days (all other)	Matches definitions and timelines in 23-17.8 for abuse, mistreatment, & neglect. Essentially, ALL complaints must be completed within 60 days. OFR's ability to meet the 60 day requirement continues to be tied to availability of surveyor resources and reductions in routine inspections.
8	C-156	(c)	Repeat of 12(b) - avoidance of conflict & separation of complaint prioritization & classification from NF regulatory functions.	OFR staff re-assignment implemented Oct'05 + orientation & training: Health licensure/certification triage for NF's assigned to Senior Nursing Care Evaluator and independent of other NF regulatory functions.
9	C-156	(d)	Interagency agreements - specifically sharing data Ombudsman, AG-QIO-DHS-DEA, etc.	May-June-July '05: Established formal meetings with appropriate agencies; Draft written agreements being reviewed for final approval.
10 11	C-156	23-17-12.6(a) (b) (c) (d) (e) (1) (2)	Independent quality monitor, quality consultant & temporary manager - in the event of IJ : Can be in addition to other sanctions; Can't be facility employee; Temp manager defined Director may require - Temp Manager for NF: severe financial dif., present substantial probability of financial insolvency, or fac. Is operating in manner/condition presents a substantial probability of IJ	Director's administrative authority; HSR/OFR monthly meetings with DHS to review fiscal conditions of NF's
12	C-156	(f)	Quals. Of consultant/temp. mg. Approved by department - report in manner & format determined by director	OFR maintains listing of acceptable/available consultants - managers, etc.
13 14 15	C-156	23-17-12.7 (a) (b) (1)- (6) (c) (d) (e) (1) (2)	Adverse change in financial condition: Meeting with provider within 10 days when DOH/DHS determines NF's financial status is of concern and have potential to result in harm or danger to residents. If provider explanation is inadequate/unacceptable by department - direct provider to submit a PoC within 10 no later than 20 days; including the following elements: Listed in statute DOH - DHS adopt rules to implement Whenever a facility's financial status is determined to be marginal, DOH to inspect to determine if "financial" issues are causing the facility to be "out of compliance" Whenever a fac. Is determined to be having severe financial difficulties, DOH shall cause more frequent inspections and the director may, at the facility's expense: Appoint an independent consultant... require a temporary manager of fac. operations Issues of confidentiality; disclosure; and who can peek under the mask!	Director's administrative authority; HSR/OFR meetings with DHS to review fiscal conditions of NF's

#	Act/Title	Statute	New items/issues	Status
5	C-157	23-17-12.8	Posting of nursing staff levels in NF's -Federal requirements (for all), and in a public place; -Maintain on file and available to the public upon request -NF prepare an annual report showing the average daily direct care nurse staffing level for the fac. by shift and by category of nurse to include, RN, LPN, NA, & medication technicians, and nurse & NA temp staff, and -nurse and NA turnover rates -information on nurse staffing shall be reviewed as part of the NF's annual licensing survey, shall be available to the public, printed and on DOH web by fac.	Added to draft nursing home regulations and OFR inspection protocol. Format for report and web placement under development.
6				
7				
8				
9	C-157	23-17-12.9	Resident & family notification: (1) For IJ: resident; legal rep, family rep, attending physician and fac. Medical director (2) For SQC: SAME (3) For chgs. In resident conditions in 42 CFR 483.10	Added to draft nursing home regulations: Sept'04 Implemented Enforcement Tracking - IJ, SQC, and Actual Harm Satus: 5 SQC - 3 of these also IJ - all notifications provided 10 Actual Harm citations (10 different facilities) - individual notifications provided OFR protocol for notifications implemented March 2005: Status: 30 todote. MDS significant change - facilities responsible for notification - OFR review on inspection.
10	C-157	23-17-12.10	Quality predictive modeling DOH develop a data modeling to use quality data from NF to detect patterns of high performance and/or potential deficiency(ies) affecting resident care.	OFR utilizing CMS-Sp.Focus Facility criteria (3 inspection cyles, follow-up inspections with def. and substantiated complaints) to select facilities for interims - implemented Oct'05. Consulting with community experts for development and implementation of comprehensive QPM.
11	C-157	23-17-12.11	Nursing fac. quality improvement program Requires and outlines conditions for QI program in NF	Expanded existing language in NF regulations to include additional language of statute.
18	C-156	40-8-19.1(a)	Nursing fac. Financial oversight and annual filing of financial report. (b) DOH by regulation shall: (1) Develop with DHS criteria for financial statements. (2) Develop criteria for reviewing the financial statement and assessing the finacial status to determine if sufficient resources to meet operational & financial expenses to comply with resident care and facility standards, and: (see list in statute) (c) If facility financial status is marginal DHS to notify DOH. (d) Special rate appeal - state plan (DHS) in the event DHO directs a consultant or temporary manager.	DOH - DHS drafting regulations.